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SANDRA K HARKHAM, CLERK
BY: T SENA

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Attorney for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C.
CUNDIFF, husband and wife; ELIZABETH
NASH, a married woman dealing with her
separate property; KENNETH PAGE and
KATHRYN PAGE, as Trustee of the Kenneth
Page and Catherine Page Trust,

Plaintiffs,

vs.

DONALD COX and CATHERINE COX,
husband and wife,

Defendants.

CASE NO. P1300CV20030399

**PLAINTIFFS' JOINDER IN
VARILEK'S REPLY TO
DEFENDANTS' RESPONSE TO
HIS MOTION TO REQUIRE
DEFENDANTS COX TO SERVE
INDISPENSABLE PARTIES
WITH DOCUMENTS
COMPORTING WITH DUE
PROCESS AND VARILEK'S
RESPONSE TO DEFENDANTS'
MOTION TO DISMISS FOR
FAILURE OF PLAINTIFFS TO
JOIN INDISPENSABLE
PARTIES**

Plaintiffs, by and through their attorney undersigned, hereby join in Varilek's above captioned pleading. In addition, Plaintiffs attach hereto as Exhibits 1-5 for this Court's ease of reference, five rulings of this Court beginning with the Under Advisement Ruling concerning Plaintiffs' request that this case be certified as a class action. These rulings are: Under Advisement Ruling filed May 7, 2010, Notice filed June 17, 2010, Notice filed June 17, 2010, Ruling Re: Requests and Ruling file February 1, 2011. Because these rulings have already been issued by this Court all parties are in possession of them and can access them on the Clerk's high profile website. Therefore, they are not being included in the copies sent to counsel and

1 unrepresented parties. As this Court will see, the rulings previously made by Judge Mackey in
2 this case reflect a process ordered by this Court and fully complied with by Plaintiffs. For the
3 reasons set forth in Plaintiff Varilek's Reply and Response, Plaintiffs' full compliance with this
4 Court's orders and the fact that the deadline for filing dispositive motions in this case was
5 December 28, 2012, Defendants' Motion to Dismiss must be denied.

6
7
8 DATED this 9th day of May, 2013.

9 J. JEFFREY COUGHLIN PLLC

10
11 By: 

J. Jeffrey Coughlin

12 COPY of the foregoing
13 mailed this 9th day of
14 May, 2013 to:

15 Jeffrey R. Adams
16 THE ADAMS LAW FIRM PLLC
17 125 Grove Avenue
18 P.O. Box 2522
19 Prescott, AZ 86302
20 Attorney for Defendants listed in Answer to
21 First Amended Complaint by Joined Property Owner Defendants
22 Dated September 22, 2010

23 David K. Wilhelmsen
24 Marguerite Kirk
25 Favour Moore & Wilhelmsen, PLC
P.O. Box 1391
Prescott, AZ 86302
Attorneys for James Verilek

Mark W. Drutz
Sharon Sargent-Flack
Musgrove, Drutz & Kack, P.C.
1135 W. Ironwood Springs Road
P.O. Box 2720
Prescott, AZ 86302

1 William "Bill" Jensen
2 14556 Howard Mesa Loop
3 Williams, AZ 86046
4 Pro Per

5 Karen L. Wargo
6 Michael P. Wargo
7 9200 E. Spurr Lane
8 Prescott Valley, AZ 86315

9 Linda J. Hahn
10 10367 W. Mohawk Lane
11 Peoria, AZ 85382

12 Noel J. Hebets
13 NOEL J. HEBETS, PLC
14 127 East 14th Street
15 Tempe, AZ 85281
16 Attorney for William M. Grace

17 Robert E. Schmitt
18 MURPHY, SCHMITT, HATHAWAY & WILSON, P.L.L.C.
19 P.O. Box 591
20 Prescott, AZ 86302
21 Attorneys for Robert H. Taylor and
22 Teri A. Thomson-Taylor

23 John and Rebecca Feddema
24 9550 E. Spurr Lane
25 Prescott Valley, AZ 86315

Gary and Sabra Feddema
9601 Far Away Place
Prescott Valley, AZ 86315

Sergio Martinez and Susana Navarro
10150 N Lawrence Lane
Prescott Valley, AZ 86315

William R. and Judith K. Stegeman Trust
9200 E. Far Away Place
Prescott Valley, AZ 86315

Rynda and Jimmy Hoffman
9650 E. Spurr Lane

1 Prescott Valley, AZ 86315
2 William and Shaunla Heckethorn
3 9715 E. Far Away Place
4 Prescott Valley, AZ 86315
5 Leo and Marilyn Murphy
6 9366 E. Turtlerock Road
7 Prescott Valley, AZ 86315
8 James and Leslie Richie
9 9800 E. Plum Creek Way
10 Prescott Valley, AZ 86315
11 Rhonda Folsom
12 9305 N. Coyote Springs Rd.
13 Prescott Valley, Arizona 86315
14 Kenneth Paloutzian
15 8200 Long Mesa Drive
16 Prescott Valley, AZ 86315
17 Bonnie Rosson
18 8950 E. Plum Creek Way
19 Prescott Valley, AZ 86315
20 Robert Lee and Patti Ann Stack/Robert Lee and Patti Ann Stack Trust
21 10375 Lawrence Lane
22 Prescott Valley, AZ 86315
23 John and Dusti Audsley
24 10500 N. Orion Way
25 Prescott Valley, AZ 86315
Dana E. and Sherrilyn G. Tapp
8595 E. Easy Street
Prescott Valley, AZ 86315
Richard and Beverly Strissel
9350 E. Slash Arrow Drive
Prescott Valley, AZ 86314
Lloyd E. and Melva Self
9250 E. Slash Arrow Drive
Prescott Valley, AZ 6315

By:

C. Padilla

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SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; BECKY NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p style="text-align: right;">Defendant.</p>	<p>Case No. P1300CV20030399</p> <p>UNDER ADVISEMENT RULING</p>	<p style="text-align: right;">FILED MAY 07 2010</p> <p>DATE: <u>8</u> O'Clock <u>A</u>.M. ✓</p> <p style="text-align: right;">JEANNE HICKS, CLERK</p> <p>BY: <u>SHEETAL PATEL</u> Deputy</p>
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<p>HONORABLE DAVID L. MACKEY</p> <p>DIVISION 1</p>	<p>BY: Cheryl Wagster Judicial Assistant</p> <p>DATE: May 6, 2010</p>
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After oral argument on March 15, 2010, the Court took under advisement the pending motions regarding the certification of this case as a class action. The Court has now fully considered the arguments presented.

The Court first considers the factors set forth in Rule 23(a), *Ariz. R. Civ. P.* The Court has previously found that although there are numerous parties that must be joined, joinder of the numerous parties is feasible. The Court declines to change that prior ruling. Consistent with the prior rulings of this Court, the Court finds that the Plaintiffs have not established that "joinder of all members is impracticable."

The Court finds that although there are questions of law and fact common to the class, the claims of the representative parties are not typical of the claims of the class. Specifically, the Court is aware from its involvement in this case that there is a substantial likelihood that some parties may favor the abandonment of the Declaration of Restrictions relative to the business or commercial use of their property while others will oppose the abandonment of such restrictions. There is simply not one class of landowners, and it is likely that upon receiving notice of these proceedings some landowners will choose to join in on the Plaintiffs' side while others may choose to join in on the Defendants' side.

The Court finds that given the substantial likelihood of the divergent positions of landowners, Plaintiffs' cannot fairly protect the interest of all parties within the class. That is not an indication by the Court of the competence of Plaintiffs' counsel as the Court finds that Plaintiffs' counsel is competent to represent the position of the current Plaintiffs and those landowners who agree with Plaintiffs' position. However, Plaintiffs' counsel will not be able to adequately represent the interests of all members of the class when those interests are diametrically opposed to each other.

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AFTER 2 P.M.

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Therefore, the Court finds that Plaintiffs have not established that they meet the prerequisites of class action certification pursuant to Rule 23(a), *Ariz.R.Civ.P.*

Although that determination is dispositive of the request for class action certification, the Court finds that a discussion of additional issues is appropriate. Specifically, the Court finds that if a class action were maintainable pursuant to Rule 23(b)(1) or (2), *Ariz.R.Civ.P.* members of the class could not request exclusion from the class pursuant to Rule 23(c)(2), *Ariz.R.Civ.P.* Under such circumstances, landowners who do not agree with the Plaintiffs' position could not seek exclusion from the class. On the other hand, if the Court finds that a class action was maintainable pursuant to Rule 23(b)(3), *Ariz.R.Civ.P.* members of the class could request exclusion from the class pursuant to Rule 23(c)(2), *Ariz.R.Civ.P.* The first option will not permit landowners to align themselves on the side they may choose. The second option would allow landowners to remove themselves from this case and not be bound by the decision of the Court. That would defeat the very purpose of the Court of Appeals ruling that joinder is necessary. Neither option is appropriate.

For all of those reasons, the Court declines to certify this action as a class action.

IT IS ORDERED the Plaintiffs' Cross Motion For Determination That Action May Proceed As Class Action is **DENIED**.

IT IS ORDERED the Defendants' Motion For Order Denying Class Action Classification and Certification and Motion For Order Re: Compliance With Order Re: Joinder is **GRANTED**.

IT IS ORDERED the Court's Order of July 15, 2009 granting Plaintiffs leave to file the Second Amended Complaint is **VACATED** and it is **ORDERED** this case shall proceed on the Plaintiffs' First Amended Complaint filed March 18, 2004 and the Defendants' Answer To Plaintiffs' First Amended Complaint filed May 21, 2004.

IT IS ORDERED that in the event the Plaintiffs do not take substantial steps to join all necessary and indispensable parties within the next **one hundred twenty (120) days**, this matter will be dismissed.

IT IS ORDERED the caption of this case shall not be amended until after service is substantially accomplished and the Court can determine whether to join a landowner who files a responsive pleading as a Plaintiff or Defendant.

IT IS ORDERED at the time Plaintiffs request the Clerk of the Court to issue Summons to be served upon the additional parties, the Plaintiffs shall file an Excel spreadsheet in paper **and** electronic form that lists the Assessor's Parcel Number in numerical order in column A, starting with row 1 as well as name(s) and mailing address of the current owner of each parcel in column B, in the row number corresponding to the Assessor's Parcel Number.

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IT IS ORDERED the Plaintiffs shall serve each property owner subject to the Declaration of Restrictions with a Notice as well as a Summons and Plaintiffs' First Amended Complaint. The Notice shall be approved by the Court in the manner set forth below.

IT IS ORDERED the Plaintiffs may accomplish service in the following manner:

1. The Plaintiffs first may attempt to obtain an Acceptance of Service from all property owners.
2. For those property owners who will not sign an Acceptance of Service, the Court authorizes alternative service by mail as provided in Rule 4.2(c), *Ariz.R.Civ.P.* whether the property owner(s) are located within Arizona or outside the State.
3. For those property owners who will not sign a return receipt, the Plaintiffs shall make reasonable attempts to obtain personal service.
4. For those property owners who are not served in the ways set forth above, the Court will consider Plaintiffs' request for other forms of alternative service.

IT IS ORDERED by May 31, 2010 or at the time of filing an initial pleading or motion with the Court, whichever is sooner, all parties and attorneys appearing in this case **SHALL** designate and maintain an e-mail address with the Clerk of the Court **and** the other parties. The e-mail address will be used to electronically distribute any document, including minute entries and other orders, rulings, and notices described in Rule 125, *Rules of the Supreme Court* by e-mail or electronic link in lieu of distribution of paper versions by regular mail. The e-mail address shall be designated on each document filed. In the event that a party's e-mail address changes, that change shall immediately be brought to the attention of the Clerk of Superior Court and included on subsequent filings and pleadings.

IT IS ORDERED that the Clerk of the Superior Court is authorized to electronically distribute any document, including minute entries and other orders, rulings, and notices described in Rule 125, *Rules of the Supreme Court* by e-mail or electronic link in lieu of distribution of paper versions by regular mail.

IT IS ORDERED, after initial service of the Summons, Notice and Plaintiffs' First Amended Complaint and with the exception that originals of all documents must be filed with the Clerk of the Court in traditional paper format, all parties are authorized to transmit documents to all other parties in electronic format and shall attach to the original document filed with Clerk of Court a notice that the document was transmitted electronically to the other parties along with a list of the names of the parties and e-mail addresses to which electronic transmission was sent.

IT IS ORDERED any party who declines to provide the Clerk of the Court and the other parties with an e-mail address **SHALL** be assessed the actual cost of mailing.

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IT IS ORDERED the Clerk of Court is authorized to establish a high profile case web site for public access to this case file.

The Court has prepared and attached to this Ruling a draft of a Notice to be served upon all landowners together with a Summons and Plaintiffs' First Amended Complaint. Counsel shall be given an opportunity for input into the form of Notice as follows.

IT IS ORDERED counsel for both sides shall have until May 31, 2010 to file objections and proposals for the Notice.

cc: J. Jeffrey Coughlin – 114 S. Pleasant Street, Prescott, AZ 86303
Jeffrey Adams – Adams & Mull, P.O. Box 1031, Prescott, AZ 86302

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; BECKY NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p style="text-align: right;">Defendant.</p>	<p>Case No. P1300CV20030399</p> <p>NOTICE</p>	<p style="text-align: center;">FILED</p> <p>DATE: <u>JUN 17 2010</u> <u>3</u> O'Clock <u>2</u> .M.</p> <p style="text-align: center;">JEANNE HICKS, CLERK</p> <p>BY: <u>SHEETAL PATEL</u> Deputy</p>
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<p>HONORABLE DAVID L. MACKEY</p> <p>DIVISION 1</p>	<p>BY: Cheryl Wagster Judicial Assistant</p> <p>DATE: June 15, 2010</p>
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The Court has considered the Plaintiffs' Proposals For Notice To All Land Owners and the Defendants' Notice of Suggested Modifications To Notice To Property Owners. The Court has this date issued the Notice that shall be served upon all property owners.

IT IS ORDERED the Plaintiffs shall serve each property owner subject to the Declaration of Restrictions with the **NOTICE** as well as the Alias Summons and Plaintiffs' First Amended Complaint.

cc: J. Jeffrey Coughlin – 114 S. Pleasant Street, Prescott, AZ 86303
Jeffrey Adams – Adams & Mull, P.O. Box 1031, Prescott, AZ 86302

JUN 15 2010

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; BECKY NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p style="text-align: right;">Defendant.</p>	<p>Case No. P1300CV20030399</p> <p>NOTICE</p>	<p style="text-align: center;">FILED</p> <p>DATE: <u>JUN 17 2010</u> <u>3</u> O'Clock <u>PM</u> JEANNE HICKS, CLERK BY: <u>SHEETAL PATEL</u> Deputy</p>
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<p>HONORABLE DAVID L. MACKEY</p> <p>DIVISION 1</p>	<p>BY: Cheryl Wagster Judicial Assistant DATE: June 15, 2010</p>
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**THIS LAWSUIT MAY AFFECT YOUR COYOTE SPRINGS RANCH
PROPERTY RIGHTS.**

You have been served as a party in this lawsuit based upon your interest in real property subject to the Declaration of Restrictions for Coyote Springs Ranch so that you can decide what action you wish to take regarding this pending lawsuit. A copy of the Declaration of Restrictions for Coyote Springs Ranch is attached to the Plaintiffs' First Amended Complaint that is being served upon you along with this Notice.

This lawsuit involves claims by the Plaintiffs that the Defendants are violating certain terms of the Declaration of Restrictions for Coyote Springs Ranch. The Defendants have denied the Plaintiffs' claims and are seeking an Order from this Court that certain terms of the Declaration of Restrictions for Coyote Springs Ranch have been abandoned and/or waived.

If you wish to obtain additional information regarding this case, you may access the Clerk of the Yavapai County Superior Court's high profile case website to review the file in this case at <http://apps.supremecourt.az.gov/docsyav/>.

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In the event you chose to file a responsive pleading in this case you must do so within the time set forth in the Summons. The Court will determine from your response whether you should be joined with the Plaintiffs or Defendants.

In the event you chose to do nothing after being served with this lawsuit, you will be bound by the decisions of this Court regarding the validity of the Declaration of Restrictions for Coyote Springs Ranch.

Since you have been served with this lawsuit, you must comply with the Orders of this Court as follows:

IT IS ORDERED if you no longer own an interest in real property that is subject to the Declaration of Restrictions for Coyote Springs Ranch you should provide written notice to the Court and the other parties to this lawsuit that you no longer own an interest in the property and the notice shall include your Assessor's Parcel Number together with the name, address and phone number of the new owner as well as a copy of any documentation reflecting the change in ownership.

IT IS ORDERED in the event you sell or transfer your interest in the property while this case is pending you shall provide the purchaser or transferee with a copy of this Notice and the Plaintiffs' First Amended Complaint no later than the close of escrow or the date of transfer.

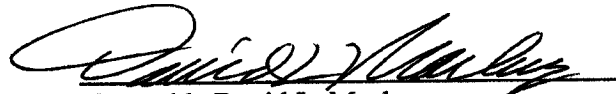
IT IS ORDERED in the event you sell or transfer your interest in the property you shall notify the Court in writing immediately and the notice shall include your Assessor's Parcel Number together with the name, address and phone number of the buyer or transferee.

IT IS ORDERED by June 30, 2010 or at the time of filing an initial pleading or motion with the Court, whichever is sooner, all parties and attorneys appearing in this case **SHALL** designate and maintain an e-mail address with the Clerk of the Court **and** the other parties. The e-mail address will be used to electronically distribute any document, including minute entries and other orders, rulings, and notices described in Rule 125, *Rules of the Supreme Court* by e-mail or electronic link in lieu of distribution of paper versions by regular mail. The e-mail address shall be designated on each document filed. In the event that a party's e-mail address changes, that change shall immediately be brought to the attention of the Clerk of Superior Court and included on subsequent filings and pleadings.

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IT IS ORDERED any party who declines to provide the Clerk of the Court and the other parties with an e-mail address **SHALL** be assessed the actual cost of mailing.

DATED THIS 15th DAY OF JUNE, 2010


Honorable David L. Mackey

cc: J. Jeffrey Coughlin – 114 S. Pleasant Street, Prescott, AZ 86303
Jeffrey Adams – Adams & Mull, P.O. Box 1031, Prescott, AZ 86302

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; BECKY NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p style="text-align: right;">Defendant.</p>	<p>Case No. P1300CV20030399</p> <p>RULING RE: REQUESTS</p>	<p style="text-align: center;">FILED</p> <p>DATE: <u>8/27/2010</u> <u>9:40</u> O'clock <u>A</u>.M.</p> <p style="text-align: center;">JEANNE HICKS, CLERK</p> <p>BY: <u>Karen Wilkes</u> Deputy</p>
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<p>HONORABLE DAVID L. MACKEY</p> <p>DIVISION 1</p>	<p>BY: Cheryl Wagster Judicial Assistant</p> <p>DATE: August 25, 2010</p>
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The Court has considered the Plaintiffs' Request For Expedited Status Conference And Determination That Plaintiffs Have Taken Substantial Steps To Join All Necessary And Indispensable Parties. The Court also has reviewed the file. On May 6, 2010, the Court ruled that the case will be dismissed unless the Plaintiffs take substantial steps to join all necessary and indispensable parties within the next one hundred twenty (120) days. The Court also notes that the Plaintiffs could not proceed to begin serving additional parties until the wording of the Notice was resolved. The Court is aware that the June 15, 2010 Ruling was not distributed to the parties until mid-July. Therefore, the Court will not penalize the Plaintiffs for the delay between the Court's May 6, 2010 Under Advisement Ruling and July 14, 2010. The Court finds that it is appropriate to exclude the time between the Court's May 6, 2010 Under Advisement Ruling and July 14, 2010 from the one hundred and twenty (120) day time frame set by the Court.

IT IS ORDERED the time between the Court's May 6, 2010 Under Advisement Ruling and July 14, 2010 is excluded from the one hundred and twenty (120) day time frame set by the Court.

Next, the Court notes that the Plaintiffs have taken a great deal of action to comply with the Court's May 6, 2010 Under Advisement Ruling, including filing an Excel spreadsheet of parcel numbers in paper and electronic form, securing the issuance of Summons, avowing that they have mailed a packet with an Acceptance of Service to all property owners and filing over 80 Acceptances of Service for the 269 parcels. Therefore, the Court notes that the Plaintiffs have taken steps to join additional parties as Ordered. However, the Court declines to find that the Plaintiffs have taken substantial steps to join all

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necessary and indispensable parties at this time as there are still steps to be taken. The Plaintiffs can proceed to the next step of attempting to serve parties who have not returned the tendered Acceptance of Service by the alternative method previously authorized. The Plaintiffs also may proceed with default procedures as they believe may be appropriate.

Given the steps Plaintiffs have taken and the steps Plaintiffs still need to take, the Court does not anticipate making a *sua sponte* decision that Plaintiffs have or have not taken substantial steps. The Court will only proceed to make such a finding after the time frame has passed and the current Plaintiffs and Defendants have an opportunity to brief the issue for the Court.

If the Plaintiffs have specific issues that they wish to address and proposals for solutions to those issues, they should set forth those issues and proposed solutions in writing. Only then can those issues be fully considered and briefed by the other parties. The Court declines to set a status conference to discuss matters without limitation and without the ability of all the parties as well as the Court to analyze the issues in advance.

IT IS ORDERED the Plaintiffs' Request For Expedited Status Conference is **DENIED**.

The Court has considered the Request For Clarification Re: Court's Notice Filed June 17, 2010. The Court is not able to render an advisory opinion to Counsel for the property owner James Varilek.

IT IS ORDERED the Request For Clarification Re: Court's Notice Filed June 17, 2010 on behalf of the property owner James Varilek is **DENIED**.

cc: (e) J. Jeffrey Coughlin – 114 S. Pleasant Street, Prescott, AZ 86303
(e) Jeffrey Adams – Adams & Mull, P.O. Box 1031, Prescott, AZ 86302

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; BECKY NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p align="right">Plaintiff,</p> <p align="center">-vs-</p> <p>DONALD COX and CATHERINE COX, husband and wife,</p> <p align="right">Defendant.</p>	<p>Case No. P1300CV20030399</p> <p>RULING</p>	<p align="center">FILED</p> <p>DATE: <u>2/1/11</u> <u>10:44</u> O'Clock <u>A</u>.M. ✓</p> <p align="center">JEANNE HICKS, CLERK</p> <p>BY: <u>Laura Wilkes</u> Deputy</p>
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<p>HONORABLE DAVID L. MACKEY</p> <p>DIVISION 1</p>	<p>BY: Cheryl Wagster Judicial Assistant</p> <p>DATE: January 26, 2011</p>
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The Court has considered the Plaintiffs' Motion For Permission To Serve Remaining Property Owners By Publication, the Response, the Joinder In Response and the Reply. The Court finds that the Plaintiffs have taken substantial steps to join all necessary and indispensable parties in a timely manner; however, after due diligence there still remains a number of parties to be served. The Plaintiffs claim that there are only seventeen (17) parties remaining unserved. The Court has reviewed the records of the Clerk of the Court and finds that there is no indication of service for the following twenty-five (25) parties and nineteen (19) parcels in which there are no property owners listed in the county records:

Parcel No. 10301057E	Gordon and Becki Nash 7901 N. Coyote Springs Rd. Prescott Valley, AZ 86315
Parcel No. 10301057G	Kenneth and Katheryn Page Family Trust 14810 N. 18th Pl. Phoenix, AZ 85022
Parcel No. 10301058C	Eric and Coleen Davis P.O. Box 27947 Prescott Valley, AZ 86312
Parcel No. 10301058D	Deborah Ann Curtis 6070 Little Papoose Dr. Prescott Valley AZ 86314
Parcel Nos. 10301058F 10301058G	Jeffrey and Renita Donaldson 2175 N. Concord Dr. #A Dewey, AZ 86327
Parcel No. 10301061D	Jeffrey Carlson 1451 W. Irving Pk Rd. #317 Itasca, IL 60143

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Parcel No. 10301073D	Michael A. Kelley Family Trust P.O. Box 26232 Prescott Valley, AZ 86312
Parcel No. 10301078C	Daniel and Ana M. Zepeda 8490 E. Spurr Prescott Valley, AZ 86314
Parcel No. 10301083A	Christopher Lefebvre 8250 E. Sparrow Hawk Rd Prescott Valley, AZ 86314
Parcel No. 10301086K	William E Brumbill Trust 8910 Morrow Dr Prescott Valley AZ 86314
Parcel No. 10301095J	Jayne Salazar 11826 Coyots Springs Road Prescott Valley, AZ 86315
Parcel No. 10301095K	Anglin Living Trust 11950 Coyote Springs Road Prescott Valley, AZ 86314
Parcel No. 10301116	Anthony B. Lee 8496 Coyote Spings Rd Prescott Valley, AZ 86315
Parcel No. 10301129A	Francis M. Moyer 6 Meadow Green Ct Johnson City, TN 37601
Parcel No. 10301130E	Robert and Therese Taylor/Thomason-Taylor Restated Trust 1987 Havens End Prescott, AZ 86305
Parcel No. 10301133E	Art and Debra G. Gustafson 9975 N. Coyote Springs Rd Prescott Valley, AZ 86315
Parcel No. 40101005Z	Wiley and Kathleen Williams 9575 E. Turtle Rock Prescott Valley, AZ 86315
Parcel No. 40101011M	Gilstrap Family Trust 9300 E. Mountain View Road Prescott Valley, AZ 86315
Parcel No. 40101026C	Kenneth and Kartheryn Page 14810 N. 18th Place Phoenix, AZ 85022
Parcel No. 40101028C	Jerry and Paulette Getz P.O. Box 25567 Prescott Valley, AZ 86312

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Parcel No. 40101037B	Timothy and Virginia Kilduff 9315 E. Spurr Lane Prescott Valley, AZ 86315
Parcel No. 40101041C	Joyce E. Ridgway 4060 Salt Creek Road Templeton, CA 93456
Parcel No. 40101043	Todd and Barbara Bloomfield 9010 E. Plum Creek Way Prescott Valley, AZ 86315
Parcel No. 40101097	Daniel and Cynthia Warta 9125 E. Pronghorn Lane Prescott Valley, AZ 86315
Parcel No. 40101167F	Ollinger Family Revocable Trust 14202 N 68th Pl Scottsdale AZ 85254
Parcel Nos.	10301061B No owner of record
	10301068
	10301070H
	10301081J
	10301086A
	10301086D
	10301090F
	10301109
	10301113H
	10301114B
	10301123H
	10301138E
	10301142
	10301147
	10301193
	40101012F
	40101012T
	40101020
	40101034

IT IS ORDERED Plaintiffs' Counsel shall arrange a meeting with Kelly Gregorio of the Clerk of the Court to review the service documents that have been filed and to attempt to reconcile any differences between the Court records and the Plaintiffs' records.

IT IS ORDERED the Plaintiffs are then **GRANTED** leave to serve by alternative service the remaining parties in the following manner:

1. Substitute service on all those with known addresses within the State pursuant to Rule 4.1(m), *Ariz. R. Civ. P.* by posting in plain view on the front door or, if gated, on the gate and mailing by first class mail to the address of record.
2. Pursuant to Rule 4.2(f), *Ariz. R. Civ. P.* for those parties whose known residence is outside the State by publishing and mailing first class mail to the person's place of residence.
3. Publishing pursuant to Rules 4.1(n) and 4.2(f), *Ariz. R. Civ. P.* for those parties whose residence is unknown and for all parcels that do not show an owner of record in the county records.

IT IS ORDERED the Plaintiffs are **GRANTED** an additional **ninety (90)** days from this date to accomplish the alternative service and to file proof of such service with the Court.

The Court has considered Linda J. Hahn's Request For Joinder As a Plaintiff In This Action and there has been no response.

IT IS ORDERED Linda J. Hahn's Request For Joinder As a Plaintiff In This Action is **GRANTED** and Linda J. Hahn is joined as a party Plaintiff in these proceedings.

IT IS FURTHER ORDERED the caption in this case shall not be amended until the Court has determined the party status of all joined parties.

The Court has signed an Order Re Motion To Withdraw As Counsel of Record With Consent for Ms. Hahn's Counsel. However, the Court notes that Ms. Hahn's ownership of the property that is the subject of this action is through the Linda J. Hahn Revocable Living Trust. Although individual property owners can represent themselves, an individual cannot represent the interest of a trust before the Superior Court. See *Boydston v. Strole Development Company*, 193 Ariz. 47, 969 P.2d 653 (1998) and *Byers-Watts v. Parker*, 199 Ariz. 466, 18 P.3d 1265 (App. 2001).

IT IS ORDERED Linda J. Hahn is granted **thirty (30)** days to clarify on the record whether she owns an interest in the property that is the subject of this action individually or through a trust, and, if her ownership is through a trust, she is given an additional **sixty (60)** days to obtain the services of a licensed Arizona attorney to represent her in these proceedings.

IT IS FURTHER ORDERED Linda J. Hahn shall provide the Clerk of the Court with an email address within **thirty (30)** days of this date.

Cundiff v. Cox
P1300CV20030399
Page Five
January 26, 2011

The Court has been provided letters to the Clerk of the Court from property owners regarding their preference in this case. The letters are attached to this Ruling and are from the following property owners:

Parcel No. 10301090H	Jesus Manjarres
Parcel No. 10301058H	Nicholas Corea
Parcel No. 10301063F	Jack and Dolores Richardson
Parcel No. 40101016	Eric Cleveland
Parcel No. 10301055B	Joyce Hattab
Parcel No. 10301123K	Robert and Patricia Janis

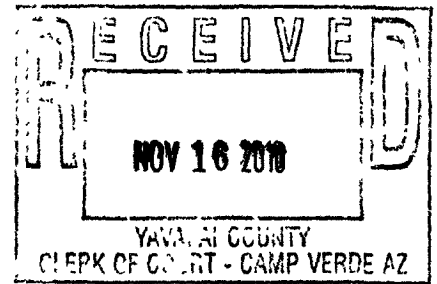
Those parties are advised that their letters are not in proper form and do not constitute responsive pleadings. Therefore, they may be subject to orders being entered without their further participation if they do not file an appropriate responsive pleading.

The Court has considered the Motion To Withdraw filed by Jeffrey R. Adams on December 17, 2010. However, the motion is less than clear as to which parties his motion applies. He first refers to only Defendants Garry and Sabra Feddema, but also lists thirteen other Defendants. The Order also refers to numerous other Defendants. The motion should be clear and the Order should clearly set forth the name, address, phone number, email address and parcel number for each Defendant covered by the motion.

IT IS ORDERED the Motion To Withdraw filed by Jeffrey R. Adams on December 17, 2010 is **DENIED** without prejudice to renew upon compliance with this Court's directive set forth above.

cc: J. Jeffrey Coughlin – 114 S. Pleasant Street, Prescott, AZ 86303
Jeffrey Adams – The Adams Law Firm, P.O. Box 2522, Prescott, AZ 86302
Christopher D. Lonn/David B. Goldstein – Hymson, Goldstein & Pantiliat,
14646 N. Kierland Blvd., Suite 255, Scottsdale, AZ 85254
David K. Wilhelmsen/Marguerite Kirk – Favour Moore & Wilhelmseon, P.O. Box 1391,
Prescott, AZ 86302
William "Bill" Jensen – 2428 W. Coronado Avenue, Flagstaff, AZ
Karen L. Wargo/Michael P. Wargo – 9200 E. Spurr Lane, Prescott Valley, AZ 86315
Christopher D. Lonn, Counsel for Linda J. Hahn
Linda J. Hahn, 10367 W. Mohawk Lane, Peoria, AZ 85382
Jesus Manjarres, 105 Paseo Sarta #C, Green Valley, AZ 85614
Nicholas Corea, 4 Denia, Laguna Niguel, CA 92677
Jack and Dolores Richardson, 505 Oppenheimer Drive #412, Los Alamos, NM 87544
Eric Cleveland, 9605 E. Disway, Prescott Valley, AZ 86315
Joyce Hattab, 3449 Lorilou Lane, Unit D, Las Vegas, NV 89121-3783
Robert and Patricia Janis, 7685 N. Coyote Springs Rd., Prescott Valley, AZ 86315

CASE # P1300 CV 2003 0399
Plaintiff: JOHN B CUNDIFF
Defendant: DONALD COX
Judge: Hon DAVID L. MACKAY



TO: CLERK OF SUPERIOR COURT YAVAPAI
COUNTY, STATE OF ARIZONA

I HAVE tried to get more history on
this case on the internet. But it
SEEMS impossible. REASON is that I
got this notice from plaintiff lawyers,
I did sign acceptance of notice, but I
also ask him how can I choose to be
IN FAVOR OR AGAINST it, so his answer
was, you can get a firm ~~out~~ on the
web, and mail it, well I WAS NEVER
ABLE to get one. Anyhow I AM
IN FAVOR OF ANY CHANGES THE
DEFENDANT WANTS to HAVE ON THE
OLD ~~PER~~ DECLARATIONS OF RESTRICTIONS
AND THE COVENANTS. ALSO I DO NOT
HAVE OR OWN A COMPUTER FOR ANY
"E" MAIL OK.

Thanks
JESUS MANJARREZ

MY PARCEL # ON
COYOTE SPRINGS IS 103-01-09CH-9 11-10-2010

P1300CV200399

To whom it My Concern:

We would like to see

the CCR's followed.

However Businesses

within the House should

be allowed!

Thomas Green

7/30/10

APN: 10301058H

AUG 2

29 July 2010

Superior Court, State of Arizona
Division 1, Room 302
120 South Cortez Street
Prescott, AZ 86303

Case No. P1300CV20030399

Re: Coyote Springs Suit on Declaration of Restrictions

Honorable Judge Mackey:

Thank you for asking for the opinion of other property owners in the Coyote Springs area regarding this issue.

Both my wife and I are adamantly opposed to lifting the Declaration of Restrictions regarding the allowance of commercial enterprises, outdoor bath room facilities and maintenance of more than one single family residence on any Coyote Springs property.

Sincerely,



Jack Richardson

Owners of: 8110 Coyote Springs Road
Prescott Valley, AZ 86315

Dolores Richardson

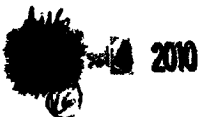


APN:

103-01-063F

DIV. 1

AUG 04 2010



29 July 2010

Superior Court, State of Arizona
Division 1, Room 302
120 South Cortez Street
Prescott, AZ 86303

Case No. P1300CV20030399

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Sincerely,



Jack Richardson

Owners of: 8110 Coyote Springs Road
Prescott Valley, AZ 86315

Dolores Richardson



DIV. 1

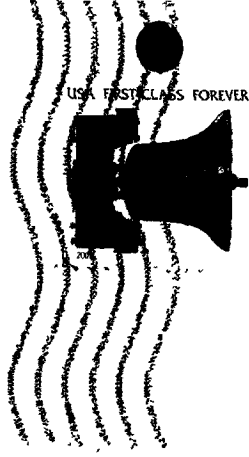
AUG 02 2010



Dody Richardson
505 Oppenheimer Dr. #412
Los Alamos, NM 87544

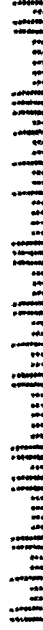
ALBUQUERQUE NM 871

30 JUL 2010 PM 3 L



Superior Court, State of Arizona
Division 1, Room 302
120 South Cortez Street
Prescott, AZ 86303

86303+4704



TO PRESCOTT SUPERIOR 7-26-10
COURT

RE: CASE NO. P1300 CV 20030399

I AM A PROPERTY OWNER AT
"COYOTE SPRINGS RANCH".

UPON PURCHASE OF THIS REAL
PROPERTY, I HAVE SIGNED
AND STILL AGREE AND APPROVE
OF THE "DECLARATION OF RESTRICTIONS
FOR COYOTE SPRINGS RANCH".

I HOPE THIS STATEMENT CLARIFIES
MY POSITION IN THIS CASE.

SINCERELY

Eric Cleveland

ERIC CLEVELAND
9605 E DISWAY
PRESCOTT VALLEY, AZ.
86314

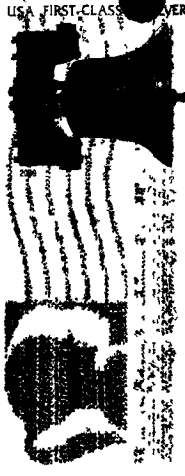
DIV. 1
AUG 03 2010

E-MAIL = FASTCHINO@
PEOPLEPC.COM

ERIC CLEVELAND
9605 E DISWA
PRESCOTT VALLEY
ARIZONA 86314

PRECEDENCE AZ 2552

27 JUL 2010 PM 11 T



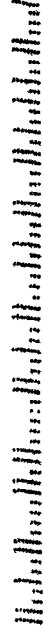
PRESCOTT SUPERIOR COURT
120 S. CORTEZ
PRESCOTT, AZ.

86303

RECEIVED JUL 28

CASE NO. P1300CV20038399

86303-4747



3449 Lorilou Lane, Unit "D"
Las Vegas, NV 89121-3783
July 31, 2010 Sat.

✓ Clerk of the Superior Court
120 S. Cortez
Prescott, AZ 86303

RE: CASE NO. PL300CV20030399

Please be advised that in subject case, I vote
RESTRICTIONS be changed, such changes to be legal,
and with the health and safety of the residents of
Coyote Springs Ranch in mind. I believe there
could be opp ortunities opened, that could help
alleviate these difficult economical times in our
Nation.

By "legal", I mean that the residents in this com-
munity must abide to the laws of this Nation.

Respectfully submitted,



Mrs. Joyce Hattab

Enc: Cover Page of Subject Case for ID.
Copy of letter to Atty. J. Jeffrey Coughlin

1 J. Jeffrey Coughlin (013801)
2 J. JEFFREY COUGHLIN PLLC
3 114 S. Pleasant Street
4 Prescott, Arizona 86303
5 Telephone: (928) 445-7137
6 Facsimile: (866) 890-8989
7 j.coughlin@azbar.org
8 Attorney for Plaintiffs

R: 7/27/10 Tues.

9 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
10 IN AND FOR THE COUNTY OF YAVAPAI

11 JOHN B. CUNDIFF and BARBARA C.
12 CUNDIFF, husband and wife; ELIZABETH
13 NASH, a married woman dealing with her
14 separate property; KENNETH PAGE and
15 KATHRYN PAGE, as Trustee of the Kenneth
16 Page and Catherine Page Trust,

17 Plaintiffs,

18 vs.

19 DONALD COX and CATHERINE COX,
20 husband and wife,

21 Defendants.

CASE NO. P1300CV20030399

SUMMONS

22 **THE STATE OF ARIZONA TO:**
23 **ALL PROPERTY OWNERS AT COYOTE SPRINGS RANCH, PHASE I**

24 YOU ARE HEREBY SUMMONED and required to appear and defend in the above
25 entitled cause and Court: (1) within TWENTY DAYS exclusive of the day of service, after
service of this Summons upon you is completed, if served by delivery of a copy of the Summons
and Complaint within the State of Arizona by a person authorized so to do; or (2) within
THIRTY DAYS exclusive of the day of service, after service of this Summons upon you is
completed, if served by delivery of a copy of the Summons and Complaint outside the State of
Arizona by a person authorized so to do, or if served by registered or certified mail, or if served
by publication in a newspaper.

3449 Lorilou Lane, Unit "D"
Las Vegas, NV 89121-3783
July 31, 2010 Sat.

J. Jeffrey Coughlin
J. Jeffrey Coughlin PLLC
114 S. Pleasant Street
Prescott, AZ 86303

RE: CASE NO. P1300CV20030399

Dear Atty. Coughlin,

Thank you for clearing up what is needed of me in
this case in our phone conversation of July 28th.

This letter is to confirm that my presence is not
required, and that I may vote in this matter.

Enclosed, is a copy of my letter to the Clerk of
the Superior Court for your information.

Thank you,


Mrs. Joyce Hattab

Enc: Copy of my let to The Clerk of the Superior Court.

Mrs. Joyce Haltab
3447 Lorlou Lane,
Las Vegas, NV 89121-3783
7/31 Sat.

3447 Lorlou Lane, NV 89121-3783
3447 Lorlou Lane, NV 89121-3783



Clerk of the Superior Court

120 S. Cortez

Prescott, AZ 86303

Wally

RECEIVED 7/31/80

BOB + PAT JANIS
E-MAIL ADDRESS
TWILIGHT RANCH
@ COMMSPEED.NET

J. JEFFREY COUGHLIN PLLC

114 SOUTH PLEASANT STREET
PRESCOTT, ARIZONA 86303

CASE NO. CV 2003-0399
DIVISION 3

July 22, 2010

CASE NO. P1300CV20030399
SUMMONS

To All Property Owners at Coyote Springs Ranch, Phase I

Dear Property Owners:

Enclosed are copies of the following documents:

1. Summons
2. Acceptance of Service
3. Notice
4. Plaintiffs' First Amended Complaint with Declaration of Restrictions attached.

You are being served with copies of these documents because a lawsuit has been filed that may affect your property rights at Coyote Springs Ranch. Superior Court Judge David L. Mackey has issued the enclosed Notice which explains options and requirements.

Judge Mackey has given us permission to serve these documents upon you by mail, if you are willing to accept them. In accordance with the Judge's directions, one of the enclosed documents is an Acceptance of Service form. Please sign the Acceptance of Service and return **that document only** to me in the enclosed self-addressed, stamped envelope at your earliest convenience.

If you choose not to sign the Acceptance of Service form, you will be served with these documents by either certified mail or by a process server.

Sincerely,

J. JEFFREY COUGHLIN PLLC


J. Jeffrey Coughlin

JJC:cp

Enclosures

TELEPHONE (928) 445-7137 FAX NO (866) 890-8989 J.COUGHLIN@AZBAR.ORG

DIV. 1

AUG 04 2010

AUG-2-2010

Superior Court of Navapai County
Case no. CV 2003-0399

In the spring of 1994 my wife and I bought land in Coyote Springs. We had a contractor build our place. We moved to Coyote Springs in September of 1994.

When we bought our land we were told there was a road committee for Coyote Springs and there was C.C. & R.S. The road was not much more than a cow path. We were informed that the people that owned the land of Lonsome valley, better known as Coyote Springs sub divided the land and sold 9+10 acre plots. They wrote up the C.C. & R.S. I understand they put in a road, but it only held up for a short time.

When we first moved here I met a man that turned out to be a close friend. He asked for a donation to maintain the dirt road. My wife & I did.

About a year after we lived here we saw smoke coming from the north of us about two blocks. A house was on fire. By the time the fire truck showed up, the home was lost. The road was so bad the fire truck had trouble coming in.

After several years the county worked out a deal with us, but we had to have 51% of people in Coyote Springs to agree to pay for the road. Well then came the road. All of the people of Coyote Springs road payed for the road. When the survey team & engineers of the road were laying out the intersection on the north side

FROM
BOB & PAT
JANIS
COYOTE SPRINGS
ROAD.

of our property at the corner. They were planning to make an entrance to our side which is on the east side of Coyote Springs road. I informed them that was not a road, but was a cattle easement. I was informed that it was a road. ~~Every~~ Every forty acres on our side of the road according to the C.C. + R^s is for cattle easement. We and our neighbor on the north side of us gave up 20 FT of our land for cattle easement. Our land survey marker is in the middle of that 40 FT. I went with my wife to the County building on Fair street. They showed me the plat of survey ~~giving~~ the survey showed that it was a road. I

Behind are property in B.L.M. land, and we found out that a road is on the plat survey going from north to south. Our cattle easement ties into it. The point is the County paid no attention to our C.C. & R^s of Coyote Springs. Check on it. You will see that it is true. They stole our land.

About seven year's back a tree nursery came into Coyote Springs. A couple blocks south of us. The C.C. & R.C. dont allow a Business in Coyote Springs. The county didnt care, and let the come in. My wife & I didnt think it was a good idea because of the water consumption on this big operation. If the wells of the neighb. went dry the county didnt care. When my wife & I moved here we saw there was.

a 50 acre race horse track just inside Coyote springs. Its a big operation, and they have employees. The C.C. & R's dont allow it, but its their. This is just some of the business in Coyote Springs. Across the street from us is a 30 acre horse rescue ranch. They have employees working for them. When the wind blows hard in our direction the dust blows big time in our direction. There are no weeds or grass to hold the dirt down. That is not exactly Wright leather.

Talking to people in Coyote Springs, I don't believe there ever was an appointed group of people to deal with C.C. & R's.

My wife and I moved here to retire. We don't really want to make waves with our neighbors.

My wife and I don't run a business on our property. We don't have outdoor toilets.

We are a single family residence. We have never run any kind of business from our home in Coyote Springs.

Our friends & neighbors did not receive this paper work or summons. This notice was supposed to go out to all property owners in Coyote Springs, according to law office of Jeffrey Coughlin PLLC

Twilight Ranch
Robert & Patricia Janis
7685 N. Coyote Springs Rd.
Prescott Valley, AZ 86314

86314



7010 1060 0001 8729 7267



1000



86303

PRESCOTT VALLEY, AZ

86314
AUG 02, '10
AMOUNT

\$5.54

00076745-04

Maricopa County Superior Court
1205 Cortez Street Prescott AZ
86303

RECEIVED AUG - 2 2010

ATT CASE No. CV 2003-0399